

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1303 of 1997

in

SPECIAL CIVIL APPLICATION No 7298 of 1996

with

Civil Application No. 10114 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHARAT OIL DEPOT

Versus

SECRETARY

Appearance:

MR HJ NANAVATI for Appellant
MR MA BUKHARI AGP for Respondents

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.M.KAPADIA

Date of decision: 07/10/98

ORAL JUDGEMENT (Per C.K. Thakker, J.):

Admitted. Mr. M.A. Bukhari, learned A.G.P. appears and waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against summary dismissal of Special Civil Application No. 7298 of 1996, on August 13, 1997.

The appellant is the original petitioner. It filed above petition for an appropriate writ, direction or order setting aside the order dated November 3, 1995 passed by the Collector and confirmed on August 27, 1996 by the State Government.

The case of appellant was that it is dealing in essential commodities. It is a partnership firm and is registered under the Indian Partnership Act, 1932. Between June 20, 1995 and June 21, 1995, appellant got delivery of edible oil from whole sellers. On June 22, 1996 an inspection was carried out at the business premises of the appellant by Civil Supplies Department and a stock of edible oil worth Rs.95,000/- was seized.

A show cause notice was issued to the appellant wherein six allegations were levelled. It was, inter alia, alleged that 82 tins of edible oil were placed behind the chowk where the business of appellant firm was carried on, registers were not got duly signed and sealed by zonal office, sale bills were not duly published and no name and address as well as licence numbers were mentioned in printed forms nor rubber stamp was affixed. In sale bills, names and addresses were not mentioned. No separate bill book was kept for different commodities. On 22.6.1995 there was shortfall and excess in certain commodities of oil.

The case of appellant in reply to the show cause notice was that the commodity in question was purchased between 20.6.1995 and 21.6.1995 and according to condition No.2 (b), if the licence holder intends to store essential articles at places other than those specified in the licence, he shall give intimation of the actual occupation of any such godowns within 96 hours (4 days) of actual occupation thereof to the licensing authority. As in the case the period of 96 hours (4 days) was not over, there was no illegality on the part of the appellant in not intimating the authority about storage of goods at a place not mentioned in the licence. It was stated that inspection of the business premises of the appellant was carried out at 1 A.M. on 21.6.1995. It was further submitted that so far as other irregularities

were concerned, they were of trivial and technical nature. It was, therefore, submitted that even if those irregularities were said to have been committed by the appellant, liberal view ought to have been taken in the matter.

The Collector passed an order on November 3, 1995 and ordered confiscation of the entire goods worth Rs.95,000/-. Appeal was filed against the said order and the State Government dismissed the said appeal on August 27, 1996 and the order passed by the Collector was confirmed. Special Civil Application also was rejected by learned Single Judge on August 13, 1996 by passing following order:

"Having heard Mr. Nanavati at length and having perused the record of the case, I see nor reason to interfere with the impugned order. In my opinion, the authorities below, after appreciating the material on record, have rightly passe the orders. There being no substance in this petition, it is rejected. Notice discharged with no order as to costs."

Mr. Nanavati contended that in view of the fact that an intimation could have been given by the appellant within a period of 96 hours, no illegality can be said to have been committed by appellant. The commodity in question was purchased between June 20, 1995 and June 21, 1995 whereas the inspection was carried on 21.6.1995. Period of 96 hours had not expired at that time. Therefore, there was no violation of condition 2 (b) of conditions of licence. If it is so, it cannot be said that appellant has committed violation of provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 ('the Order' for short), nor the appellant can be said to be responsible under the provisions of the Essential Commodities Act, 1955 ('the Act' for short).

In the alternative, it was argued that even if it is assumed that there was some irregularity, defect or illegality on the part of the appellant, it can be said to be of technical nature and in absence of any finding regarding hoarding or black-marketing, the order of confiscation of entire commodity worth Rs.95,000/- was grossly disproportionate and excessively high. Our attention was invited to following two decisions:

Mr. Bukhari, learned A.G.P. has supported the order passed by the authorities and confirmed by learned Single Judge. He submitted that after appreciating the facts and circumstances of the case, order was passed which cannot be said to be illegal or unjust.

Having considered the rival contentions of the parties, we are of the opinion that the appeal deserves to be partly allowed. When the appellate authority has recorded a finding that the appellant had not informed the authority about the purchase of goods, it can be said that there was an irregularity committed by appellant. It is true that condition No.2 (b) of the conditions of licence enables a trader or dealer to intimate the authority within 96 hours but when a finding is recorded that he ought to have informed, it can be said that the said defence was not either put forward by appellant or was not believed. Therefore, to that extent, a defect was committed by the appellant. Similarly, other defects were also held proved. In LPA, this Court cannot undertake the task of appreciating and reappreciating the evidence on record. To that extent, therefore, it cannot be said that there is violation of the provisions by the appellant.

But then it is clear that other defects were not of serious nature and as held by the Supreme Court as well as this Court in the decision referred to above, that though the authorities have power to order confiscation, such powers must be exercised judiciously and in accordance with well settled principles. As the period of 96 hours was not over and as the other defects could not be termed as serious and there was no finding by any authority regarding hoarding and black-marketing by the appellant, in our opinion, ends of justice would be met if the appeal is partly allowed by confirming the order of confiscation to the extent of 50% and by setting aside the remaining 50% of compensation.

The appeal is accordingly, partly, allowed. The order is modified and it is directed that 50% of the commodity is ordered to be confiscated to the State and remaining 50% is ordered to be released. If the commodity is not available, in lieu thereof, the price of the goods to be paid to appellant. Appeal is accordingly allowed to that extent. No order as to costs.

No order on Civil Application.

(karan)